IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 226 OF 2007

Raju Hemraj Chanda .. Appellant

Vs.

Pandharinath Bapurao Kawade .. Respondent

Mr.P.D.Pise,Advocate, for the the appellant.

Mr.V.G.Mujumdar, Advocate, for the respondent.

CORAM: J.H.BHATIA,J.

DATE : 24th August, 2007

P.C.

1. With consent of the parties, the Appeal is taken up for final hearing at the stage of admission itself.

2. The respondent, who is the original plaintiff, filed Special Civil Suit No.1053 of 2001 seeking decree for declaration of his title over the suit property, being Flat No.13 in Indira Co-operative Housing Society, Yerwada, Pune. According to him, the defendant had

purchased the flat from the builder. According to the plaintiff, the defendnt agreed to sell the said flat to the plaintiff for a consideration of Rs.4,55,000/- and after accepting the entire cosideration amount, he executed an agreement for sale on 21.4.1999. That document came to be registered on 4.10.2000. According tothe plaintiff, on 16.5.2000, the defendant had executed a general power of attorney in favour of the plaintiff and on the basis of the general power of attorney, the plaintiff executed the conveyance deed of the said flat in favour of himself on behalf of the defendant. That document came to be registered on 4.2.2000. The possession was not given to the plaintiff. Therefore, he filed the suit for declaration of title and also for possession and perpetual injunction against the defendant. It appears that after service of the suit summons, the defendant appeared, but failed to file the written statement and, therefore, on 2.4.2004, the trial Court passed an order to proceed with the suit without written statement. On 29.6.2004, the plaintiff filed his affidavit of examination-in-chief and closed his evidence. On the same day, the defendant had also filed an application seeking permission to file written statement, but that application was rejected. The defendant filed one more application on 9.9.2004 for taking the written statement on record. That application was also rejected and the

learned trial Court passed the decree of declaration, possession and perpetual injunction against the defendant.

3. The defendant has challenged the said judgment in this Appeal. According to the defendant, serious injustice has been done to him by not permitting to file written statement.

4. Heard learned Counsel for both the sides and perused the impugned judgment.

5. In view of the facts stated above, I find that the trial Court committed serious error in rejecting the application dated 29.6.2004 filed by the defendant seeking permission to file the written statement. In fact, on 2.4.2004, only the trial Court had passed the order to proceed with without written statement. It appears that on the next date, he came before the Court seeking liberty to file written statement. However, while rejecting the application, the trial Court allowed the plaintiff to file an affidavit of examination in chief and decided the suit on that basis. Taking into consideration the circumstances in which the plaintiff claims to have executed the sale deed in his own favour on the basis of the general power of attorney allegedly executed by the defendant and in view of this, the

defendant has allegedly lost title over the valuable residential flat where the defendant himself is residing, in my opinion, grave injustice will be caused to the defendant by refusing permission to him to file the written statement. In fact, taking into consideration the circumstances and the pleadings of the plaintiff, the learned trial Court should have been alert and should have given an opportunity to the defendant to file written statement and to contest the suit. Taking into consideration the circumstances, I find that the impugned judgment is liable to be set aside.

6. In the result, the Appeal is allowed. The impugned judgment dated 7.11.2006 in Special Civil Suit No.1053 of 2001 on the file of Civil Judge, Senior Division, Pune, is hereby set aside. The suit is remanded back to the learned Civil Judge, Senior Division, Pune, with a direction to allow the defendant tofile written statement within four weeks from today and thereafter to dispose of the suit as per law without being influenced by any of the observations made in the earlier judgment or in this order. In case written statement is not filed within four weeks, this Appeal shall be deemed to have been dismissed. No order as to costs.

(J.H.BHATIA,J.)